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Convention on the Rights of the Child

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Committee on the Rights of the Child
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Item 4 of the provisional agenda
Consideration of reports of States parties

List of issues in relation to the report submitted by Bhutan under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Addendum

Replies of Bhutan to the list of issues*

[Date received: 24 April 2017]

* The present document is being issued without formal editing.

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Please recycle

List of acronyms

CCPA	The Child Care and Protection Act 2011
CCPC	The Civil and Criminal Procedure Code of Bhutan 2001 and (amendment) 2011
CRC	Convention on the Rights of the Child
CSO	Civil Society Organizations
DSRR	Defense Service Rules and Regulation
LEA	The Labour and Employment Act 2007
NCWC	National Commission for Women and Children
PCB	The Penal Code of Bhutan 2004 and (amendment) 2011
RBPA	Royal Bhutan Police Act 2009
RBPR&R	Royal Bhutan Police Rules and Regulation
RENEW	Respect, Educate, Nurture and Empower Women
YDF	Bhutan Youth Development Fund

1. **Please inform the Committee of the measures taken to define the recruitment of children the age of 15 as a war crime.**

1.1 While there is no specific legislation designating the recruitment of children under 15 or 18 in armed conflict as a war crime, the Royal Government of Bhutan prohibits the recruitment of children in armed conflict through Section 114 of the RBPA, RBPR&RS DSRR. The LEA also prohibits the recruitment of children in armed conflict through Section 2 (9). These have been outlined in the report submitted to the Committee under paragraphs 27, 33, 58 and 59.

2. **Please provide detailed information on the measures taken to specifically disseminate the provisions of the Optional Protocol among professional groups, children and general public. Please also indicate whether any specific training has been provided to professionals working for or with children, especially for members of the armed forces, the police, immigration officials, lawyers, judges, teachers and medical and social workers.**

2.1 The NCWC in 2012 trained a group of officials from government and non-government agencies on the CRC and the Optional Protocols to the CRC and developed a training manual to be used to build the capacity of relevant personnel including volunteers on the CRC and its Optional Protocols. As follow up to the Training of Trainers, nationwide awareness for service providers, communities and children have been carried out by the agencies using the pool of trained personnel.

2.2 The NCWC has also been carrying out a nationwide awareness program on child rights, laws protecting the rights of children and gender equality. Since 2013, awareness has been carried out in 12 districts. Dratshang Lhentshog carried out sensitization programs for 26 teachers in the monastic institutions in Thimphu in 2014 and in 2015 awareness programs were carried out in the monastic institutions of the western and eastern regions. CSO Ability Bhutan Society has carried out awareness programs on CRC and the Optional Protocols in three districts. More than 800 teachers and 335 professionals working in the field of disability have also been sensitized. Awareness programs for communities have also been carried out by the RENEW and YDF.

3. **With reference to paragraph 35 of the State party's report, please provide information on how the Child Care and Protection Act of 2011 serves as a preventive measure for offence under the Optional Protocol.**

3.1 The CCPA is the first official and legal document that defines children as any person under the age of 18 years. The provision under the CCPA outlining that the best interests of children shall be of primary consideration ensures that rights of children are protected and promoted. This ensures that children are not engaged in any situation that would put their lives at risk, thereby ensuring that no decision can be taken to engage children in armed conflict by the government and can be evoked to penalise any individual or group that involves children in harmful situations, which includes armed conflict.

4. **Please provide information on the criminal legislation in force, covering and defining the acts enumerated under articles1, 2, and 4 of the Optional Protocol, including the definition of compulsory recruitment, direct participation, and use of children in hostilities. Please inform the Committee on whether the Labour and Employment Act, prohibiting the recruitment of children for use in armed conflict, applies to the armed forces.**

4.1 The LEA as a national law is applicable across the Kingdom and all individuals and organisation are required to abide by the provisions outlined in the LEA. Section 9(a) of LEA specifically prohibits the recruitment of children in armed conflict and such an offence is graded as a felony of the third degree.

5. Please inform the Committee of the sentences applicable under the law for attempts to commit and complicity or participation in the offences under the Optional Protocol.

5.1 The Constitution of the Kingdom of Bhutan[1] provides that once an International Convention or a Protocol is duly acceded, it is deemed law on ratification by the government unless it is inconsistent with the constitution.[2] Since the Optional Protocol was ratified in 2009 after the adoption of the Constitution in 2008, the offences under the optional protocol will have the effect of a deemed law unless it is inconsistent with the constitution. Further, the CCPC[3] mandates the courts in Bhutan to apply international convention and protocols duly acceded and ratified by Bhutan.[4]

5.2 On the offence of recruitment of children for armed conflict, one may note that recruitment of child for use in armed conflict is considered as worst form of child labour and hence prohibited.[5] The contravention of this prohibition on recruitment will be liable for felony[6] of the third degree.[7]

5.3 The PCB provides provision on the sentence/grading of criminal attempt as third degree felony, if the offence is of first and second degree felony[8] and half the penalty awarded to the person, who had committed the crime, if the offence is third degree felony, fourth degree felony, misdemeanour or petty misdemeanour.[9] Further, the sentence/grading of aiding and abetting is fourth degree felony, if the offence is of first, second and third degree felony[10] and half the penalty awarded to the person, who had committed the crime, if the offence is of fourth degree felony, misdemeanour or petty misdemeanour.[11]

6. Please provide information on laws concerning the criminal liability of legal persons, such private military and security companies (PMCs and PSCs), for the acts and activities enumerated in the Optional Protocol.

6.1 All companies are required to abide by the national laws of the Kingdom, which includes the LEA. Section 9(a) of the LEA prohibits the recruitment of children in armed conflict and such an offence is graded as a felony of the third degree.

7. Please indicate the legal provision that establish jurisdiction over the offences in Articles 1,2, 4 of the Optional Protocol, including information about the grounds for this jurisdiction and the age at which such jurisdiction on crimes of child recruitment applies.

7.1 In matters arising out of or under international conventions, the High Court has the original jurisdiction.[12] Further, the CCPC provides that district court has the original jurisdiction over all the cases in the country where venue exists in its territorial jurisdiction and original jurisdiction of the High Court does not apply.[13] Therefore, if any offence under

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[1] Adopted on 18 July 2008.
[2] Constitution of Kingdom of Bhutan 2008 (Bhutan) Article 10, section 25.
[3] Adopted on 3 July 2001.
[4] Civil and Criminal Procedure Code 2001 (Bhutan) s29.
[5] Labour and Employment Act of Bhutan 2007 (Bhutan) s9.
[6] A felony of the first degree is a sentence of a minimum fifteen years and a maximum of life imprisonment; A felony of the second degree is a sentence of a minimum Nine years and a maximum of Less than fifteen years; A felony of the Third degree is a sentence of a minimum Five years and a maximum of Less than nine years; A felony of the fourth degree is a sentence of a minimum of three years and a maximum of Less than five years; A misdemeanor is a sentence of a minimum one year and a maximum of Less than three years; A petty misdemeanor is a sentence of a minimum one month and a maximum of Less than one year; A violation is a fine of the daily minimum national wage rate for a maximum of ninety days (daily minimum wage rate is set at Ngultrum 125 for purpose of judicial proceedings).
[7] Labour and Employment Act of Bhutan 2007 (Bhutan) s10.
[8] Labour and Employment Act of Bhutan 2007 (Bhutan) s134 (a).
[9] Labour and Employment Act of Bhutan 2007 (Bhutan) s134 (b).
[10] Labour and Employment Act of Bhutan 2007 (Bhutan) s135 (a).
[11] Labour and Employment Act of Bhutan 2007 (Bhutan) s135 (b).
[12] S22(a) CCPC 2001.
[13] S24 CCPC 2001.

articles 1, 2, 4 of the Optional Protocol has occurred within Bhutan then based on the above two provisions, the High Court or the district court will have jurisdiction.

8. Please indicate what national legal provisions provide for the establishment of extraterritorial jurisdiction over offences under the Optional Protocol.

8.1 Section 20 of the CCPC establishes the extraterritorial jurisdiction over offences under the Optional Protocol which states that "the Supreme/High Court shall exercise jurisdiction outside Bhutan on the bases of the following principles:

(a) territorial;

(b) nationality;

(c) passive personality;

(d) protective;

(e) universality;

(f) flag jurisdiction; and

(g) airspace.

Thus, the High court and Supreme Court has original jurisdiction over all the offences of extraterritorial nature.

9. Please provide information on existing remedies and reparations that may be sought by child victims of recruitment. Please inform the Committee whether there are any refugees, asylum seeking or unaccompanied foreign children in the jurisdiction of the State Party who have or may have been involved in armed conflict.

9.1 Section 38 of the PCB provides for the general compensatory damages for the victims of the crime. Thus, the child victims of recruitment have the provision to seek compensatory damages under this provision. Further, the section 39 of the Code states that " If the Court determines that compensatory damages are appropriate, then a defendant convicted of a crime shall pay appropriate compensatory damages at the rate of the daily minimum national wage rate at the time of the crime for (a) Maximum ten years to the victim or surviving spouse or next of kin of the victim and the cost for forty-nine days for seven people towards the expenses incurred in the funeral rites of the deceased victim, when the crime has resulted in the death of the victim; (b) Maximum of ten years, if the crime causes permanent disability to the victim; (c) Maximum of seven years, if the crime causes partial disability to the victim; (d) Maximum of five years, if the crime endangers the victim's life or causes serious bodily injury to the victim; or (e) The wages lost to the victim, when the crime has resulted in temporary loss of wages. Section 36 of the PCB also mandates an offender to pay appropriate damages or reparation for any loss, injury, or deterioration caused to a victim.

9.2 Further Section 30 and 30.1 of the CCPC may also be used by child victims to seek compensation for damages from those legally responsible. These Sections give the discretionary power to the Supreme Court and High Courts to make rules regarding the amount of compensation or damages to be awarded.

9.3 There has not been any case reported of refugee, asylum seeking or unaccompanied foreign children who have or may have been involved in armed conflict.